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Mrs. Francesca Tamami *

Farid Srouf *

For the Petition *

Martin Klauber, Esquire *

People's Counsel *

In Support of the Petition *

Board of Appeals Case No. S-2678
(OZAH Case No. 06-34)

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2678, filed on March 28, 2006, seeks a special exception to permit “a medical practitioners’ office [dental office] for use of other than a resident of the building,” pursuant to §59-G-2.36 of the Zoning Ordinance. The subject site is located at 10006 Falls Road, Potomac, Maryland, and it is zoned R-200. The property is owned principally by Farid Srour (Tax Account Number 10-00849485), and is leased to Petitioners (Exhibit 9).

The structure contains a dental office on the first floor and a residential unit on the second floor. The property had been leased by another dentist, Dr. Gigi Meinecke, who filed for a special exception in 2004 (S-2620), but she closed her practice and withdrew the petition before a ruling. Dr. Tamami currently operates the dental office, which he renovated and equipped, under a home health practitioner’s permit (Home Occupation Certificate No. 236587). He and his family reside in the second floor residential unit, but the growth of their family makes it necessary to move their residence to another location. Because he wishes to continue his dental practice on the subject property, Dr. Tamami intends to continue leasing the entire house and to sublet the second floor and the basement portion of the house as a residential unit. As such, Petitioners will need a special exception to permit a medical practitioner’s office for use by a nonresident.

On June 22, 2006, the matter was noticed for a hearing on September 29, 2006 (Exhibit 12). Technical Staff of the Maryland-National Capital Park and Planning Commission recommended approval, with conditions, in a report dated September 8, 2006 (Exhibit 15).¹ The Planning Board also recommended approval, with conditions, in a letter dated September 22, 2006 (Exhibit 16).

The public hearing was convened as scheduled on September 29, 2006, but it had to be adjourned before completion because issues regarding the location of parking on the site remained unresolved, and further review by Technical Staff was needed. On October 12, 2006, a new notice of

¹ The Technical Staff Report is frequently quoted and paraphrased herein.

hearing was issued, scheduling the resumption of the hearing for November 13, 2006. That notice also gave notice that Petitioners sought a waiver under Zoning Ordinance §59-E-4.5, from certain parking requirements.²

Petitioner filed revised site and landscape/lighting plans (Exhibits 22(a) and (b)), which were reviewed and approved by Technical Staff (Exhibit 25). On November 2, 2006, notice of the amended petition was issued. No opposition to the amendments was received, and the motion to amend was granted.

The public hearing was reconvened as scheduled on November 13, 2006, and testimony was received from Petitioners and the property owner, Farid Srour. There was no opposition testimony, and there are no letters of opposition in the file. Martin Klauber, the People's Counsel, appeared in support of the petition.

Because the landscape/lighting plan had to be slightly revised to comply with Technical Staff's suggestion that it show five white pine trees in the rear, Petitioners filed another revised landscape /lighting plan (Exhibits 26) at the hearing. Therefore, the record was held open for 14 days until November 27, 2006, to receive any public comment. None was received, and after the filing of some additional documents requested by the Hearing Examiner, the record closed on November 27, 2006.

As will appear more fully below, the only significant issue in this case concerns the size of the subject lot. After considering this issue (*See* Part II.A, below), the Hearing Examiner recommends that both the petition and the requested parking waiver be granted.

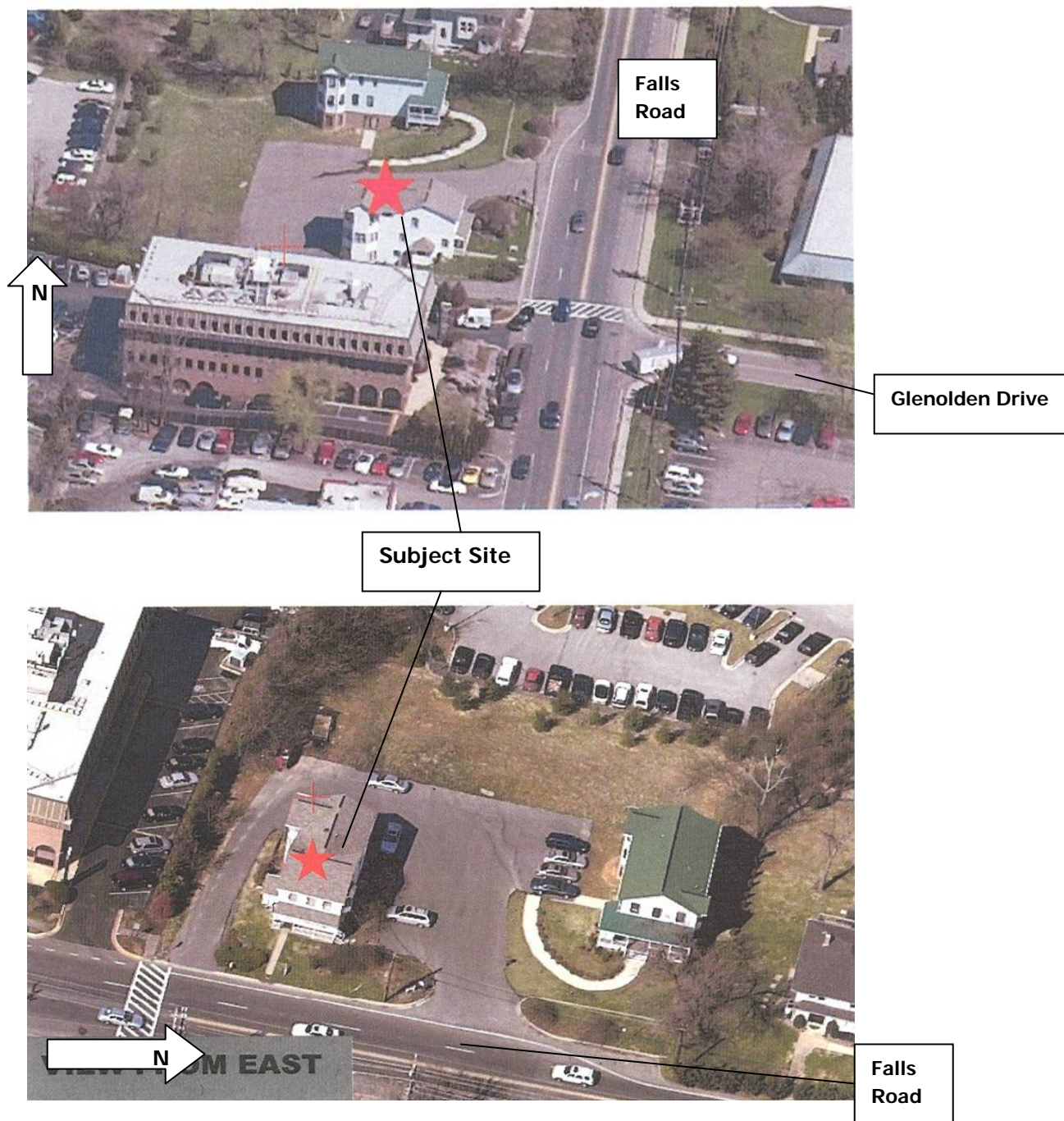
II. BACKGROUND

A. The Subject Property

The subject property is located on the west side of Falls Road, opposite its intersection with Glenolden Drive. It is identified as Parcel 165 on Tax Map FP 342, is generally rectangular in shape

² Originally, Petitioners sought a waiver of both the doubled side-yard parking setback under Zoning Ordinance §59-E-2.83(b) and the shading requirement under Zoning Ordinance §59-E-2.83(d). A subsequent change in the site plan eliminated the need for a waiver of the side-yard setbacks.

and comprises approximately 17,472 square feet of land.³ It is improved with a two-story frame structure with a basement. The property has approximately 76 feet of frontage on Falls Road, as can be seen on the following photos from pages 3 and 5 of the Technical Staff report (Exhibit 15):



³ This figure includes property in the right-of-way. Petitioners list the size of the property as 17,420 square feet in their Statement of Operations (Exhibit 3), a figure which was echoed in the text of the Technical Staff report (Exhibit 15) at page 3. However, on pages 7 and 8 of the Technical Staff report, the lot area is listed as 17,472 square feet. That is the figure specified on the surveyor's certified Site Plan, with the notation that it includes property in the right-of-way. The deed and the property tax records specify the land area of the parcel as 16,802 square feet.

Access via a pedestrian walkway and a 14-foot wide driveway is shown on these photos. According to Technical Staff, the principal vehicular access to the property is through a 50-foot easement on the northeastern corner of the property. Most of the rear yard and the two side yards of the property are paved with asphalt and are used for parking and vehicular access to the property. As will appear more fully below, the parking arrangement will be changed for the special exception. The house and the parking lot are depicted in photos introduced at the hearing as Exhibits 8(a) through (e):



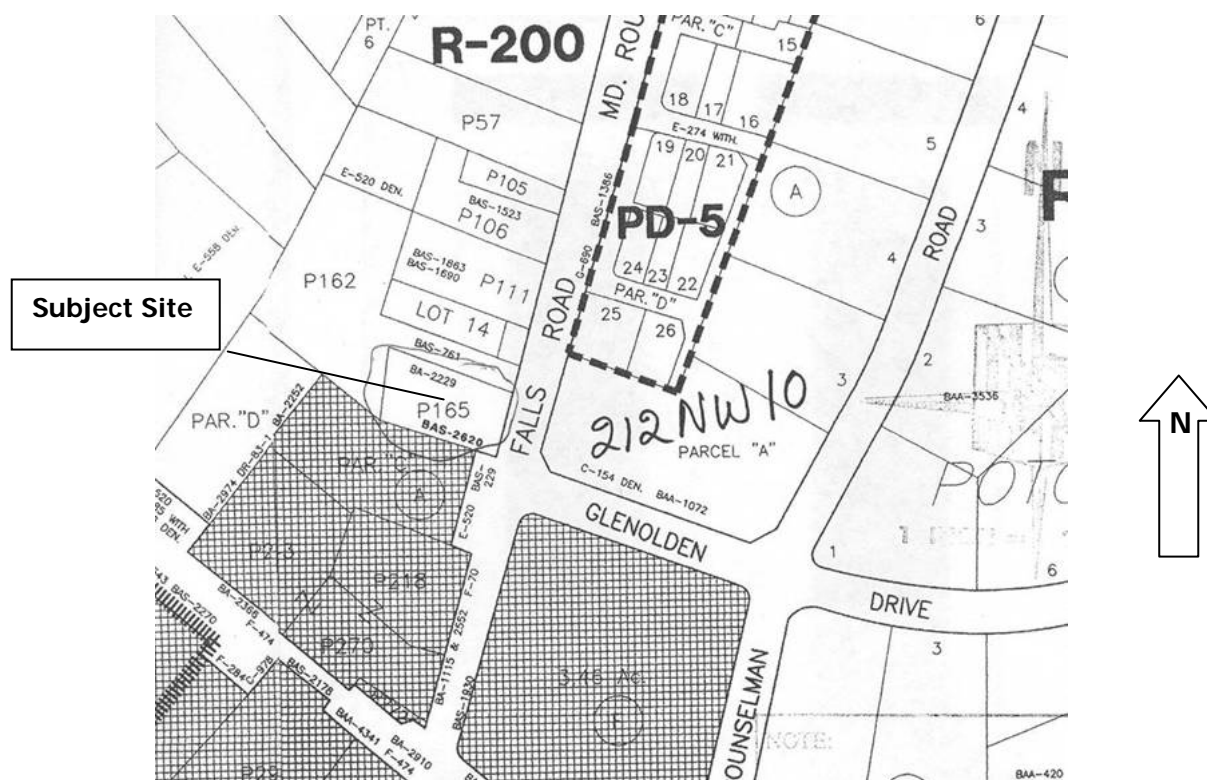


As can be seen, a portion of the front yard of the property is covered with grass, shrubs and ornamental trees. Currently there are four designated parking spaces on the north portion of the property adjacent to the building (Photo on left, below, from Exhibit 8(d)). The new parking area will be in the back, an area shown in the photo on the right, below, also from Exhibit 8(d):



The one issue in this case is created by the fact that the subject site is a parcel of land containing 17,472 square feet, which is less than the 20,000 square feet required for the R-200 Zone.⁴ This difference is not fatal in this case because the evidence indicates that the lot size was over 20,000 square feet when the building was constructed in 1967, and the frontage was over 100 feet. *See*, Exhibit 30. That is consistent with the minimum lot size for the R-R Zone (also 20,000 square feet) which was applicable when the building was constructed in 1964. Thus, the building was lawful when constructed.

If the present non-conformity had been created by amendment of the zoning ordinance or the zoning map, there would be no issue, because by definition, the building would be a lawful non-conforming structure. *See*, Zoning Ordinance §59-A-2.1. However, the present case is a little different, because the non-conformity was created not by rezoning or change to the zoning ordinance, but by later subdivision of a portion of the subject parcel (Parcel 165 at 1006 Falls Road), creating Lot 14 (at 10008 Falls Road), with which it shares an ingress-egress easement. The two lots can be seen below on a small portion of the Zoning Vicinity Map (Exhibit 11):



⁴ Frontage, at 80 feet, is also below the minimum frontage of 100 feet (at the building line) specified for the R-200 Zone.

Since the subdivision into Lot 14 was clearly a governmental action, the once-conforming structure on Parcel 165 may be grandfathered for the same constitutional reasons it would have been grandfathered if its situation had been changed by the subsequent governmental action of rezoning.⁵ Moreover, the deed by which the present owner, Farid Srour, acquired the property in 1987 indicates that the previous deed for the property was recorded on August 14, 1937. *See* Exhibit 31. The one-family dwelling on the site was constructed in 1964, prior to its acquisition by Mr. Srour. Zoning Ordinance §59-B-5.3 provides, in relevant part, “*Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building. . . .*” The best evidence in this case indicates that the subject lot was recorded by deed in 1937, and §59-B-5.3 would therefore apply.

Moreover, Zoning Ordinance §59-B-5.1 provides, in relevant part,

Any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. . . .
[Emphasis added.]

Based on this statutory language, and because neither the structure nor the proposed use⁶ will be altered under this special exception, the Hearing Examiner concludes that a special exception may be approved for this now-undersized lot.

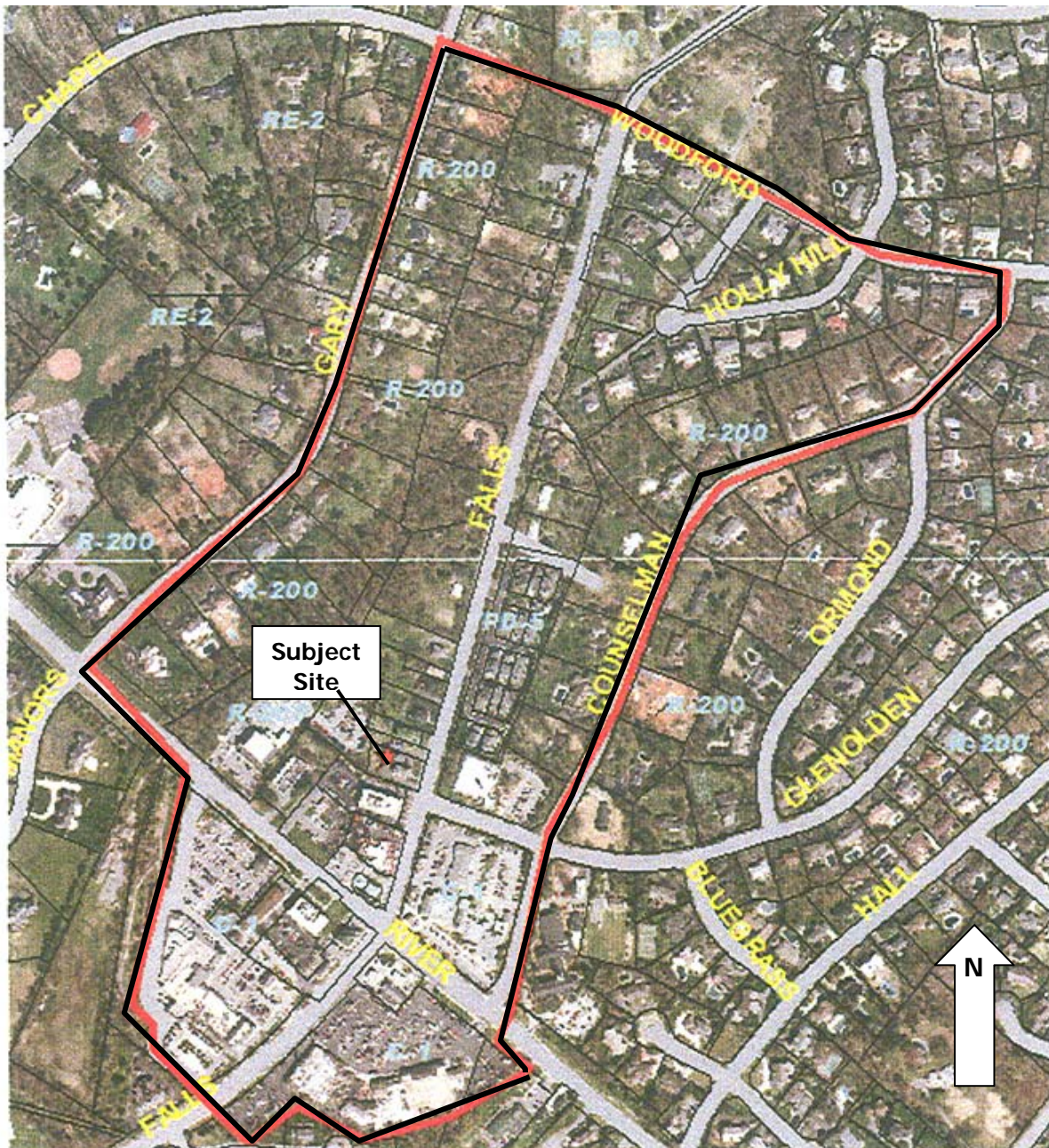
B. The Neighborhood and its Character

Technical Staff described the general neighborhood as bordered by Woodford Road to the North, Gary Road to the west, River Road and the Potomac Village Center to the south and

⁵ It should be mentioned that the subdivision of Lot 14 did not subdivide the subject site (Parcel 165) into a recorded lot. As to the issue of subsequent governmental action, it is not clear that any constitutional protections apply in this case because the present owner may have brought about the subdivision of Lot 14, in which case he might not be entitled to protections against the effects of subsequent governmental actions upon his property rights. This issue need not be resolved in this case because of the application of Zoning Ordinance §§59-B-5.1 and 5.3, as discussed in the text above.

⁶ As will appear more fully below in Part II.D of this report, Petitioners are not seeking any expansion of the dental office currently being used by Dr. Tamami under a home health practitioner’s permit.

Councilman Road to the east. The Hearing Examiner accepts Technical Staff's definition of the general neighborhood, and it can be seen below on a map from page 4 of the Technical Staff report (Exhibit 15):



The property is within the area identified as Potomac Village in the *Potomac Subregion Master Plan*. Technical Staff described the general neighborhood as follows: With the exception of the commercial uses in Potomac Village, which are in the C-1 Zone, most of the immediate area is

residential. It is mainly in the R-200 Zone, except for one small townhouse development (the Village at Potomac) in the PD-5 Zone. Potomac Village Center comprises approximately 26 acres of land and consists of several commercially developed properties with a mixture of office, retail and service uses in the C-1 Zone. The majority of the commercial uses are located at or near the intersection of River Road and Falls Road.

According to Technical Staff, adjoining uses include a parking lot for the US Post Office and the Potomac Electric Power Company building, both to the southwest, adjacent to the subject property and in the R-200 Zone; the Potomac Public Library to the east across from the subject property in the R-200 Zone; and an office building housing a bank and other business offices to the south in the C-1 Zone. A residential dwelling containing a home occupation is located to the north (the aforementioned Lot 14), separated from the subject site by a 50-foot easement from which both properties are accessed.

C. The Master Plan

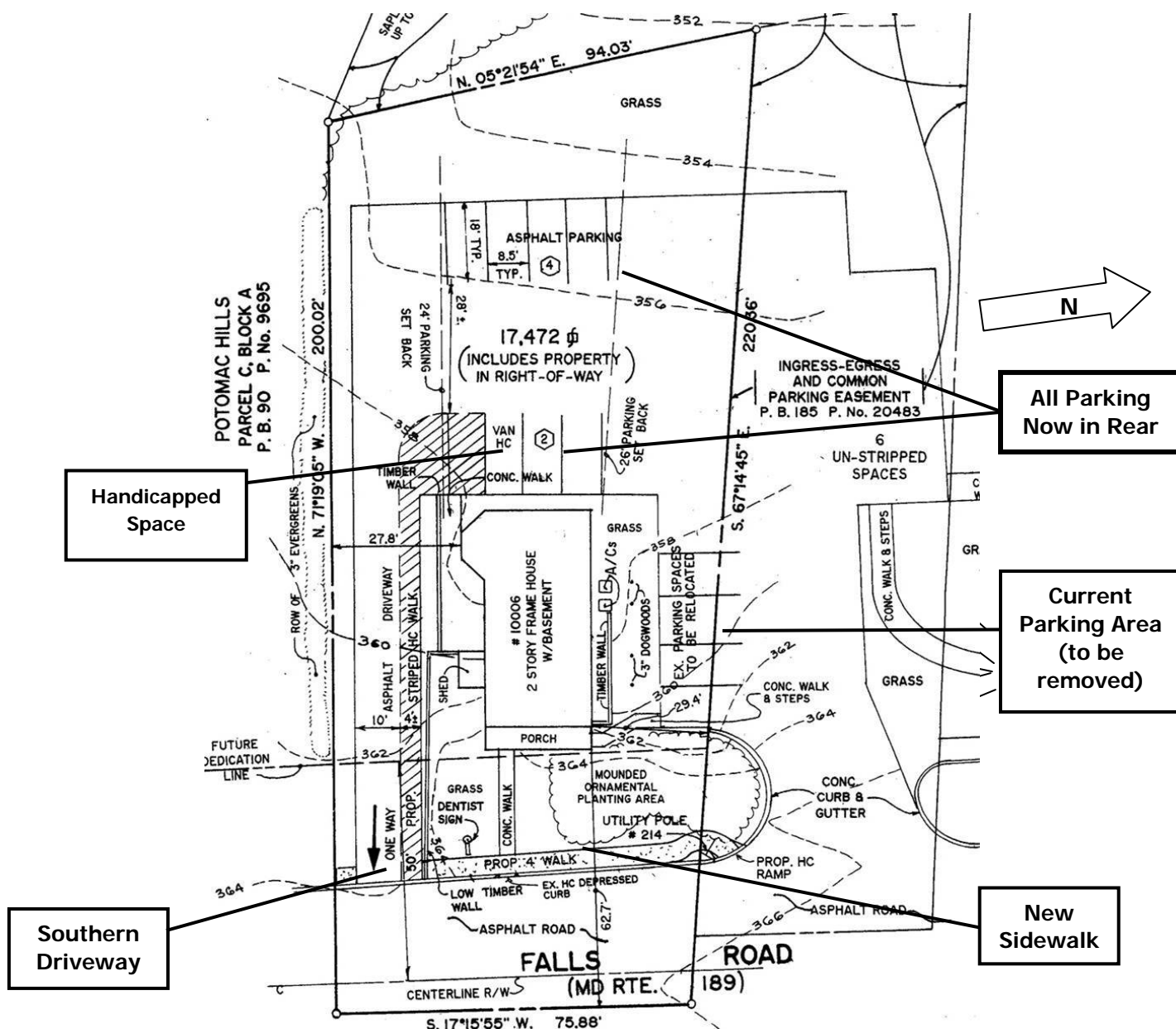
The subject property lies within the *2002 Potomac Subregion Master Plan* area. The Master Plan (p. 67) specifically addresses the subject site and two other nearby parcels (10008 and 10010 Falls Road), identified together as the “Habibi/Srour Properties.” The Plan notes that these properties form “a transition from the commercial core to the single-family residential area ordering the [Potomac] village.” The Master Plan rejected commercial zoning (C-1) for the property, and recommended the retention of the existing R-200 zoning. It also suggests that the site is suitable for housing for the elderly.

Technical Staff found the current proposal to be “a fairly modest extension of the existing use of the property,” with adequate parking and access. Staff suggested that master plan compliance would be aided by a more detailed parking plan, provision of a sidewalk, closing the southern driveway and supplementing the plantings. Petitioners have agreed to take all these steps, with the exception of closing the southern driveway, which will be discussed in Part II.E. of this report, below.

The Hearing Examiner concludes, as did the Technical Staff, that the proposed special exception would be consistent with the *2002 Potomac Subregion Master Plan*.

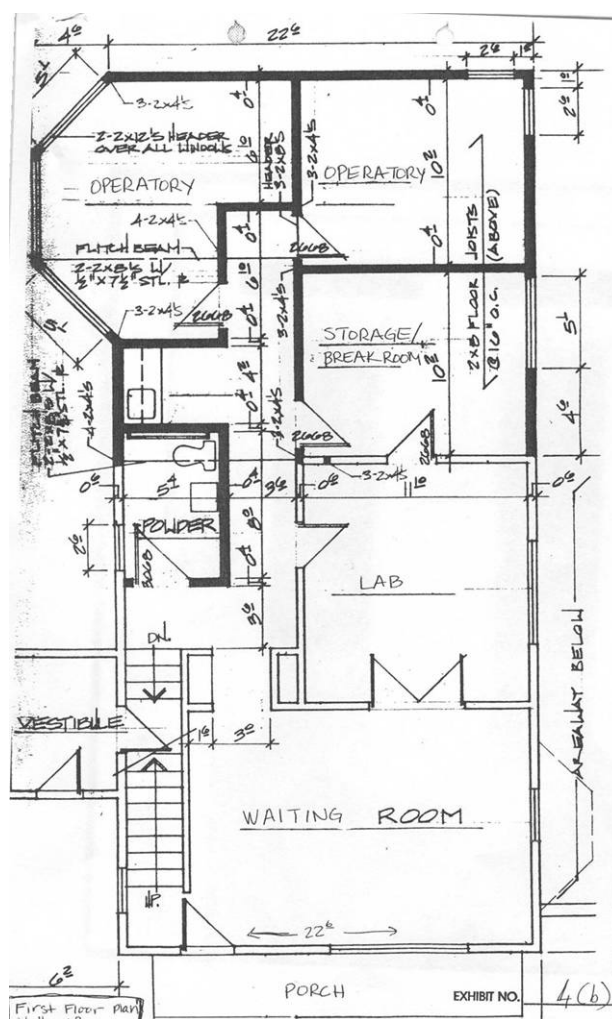
D. The Proposed Use and the Parking Waiver

As stated at the outset of this report, Petitioners seek a special exception to convert their current home occupation certificate into “a medical practitioners’ office [dental practice] for use of other than a resident of the building,” pursuant to §59-G-2.36 of the Zoning Ordinance. The subject site is located at 10006 Falls Road in Potomac. Shown below is the revised Site Plan (Exhibit 22(a)):



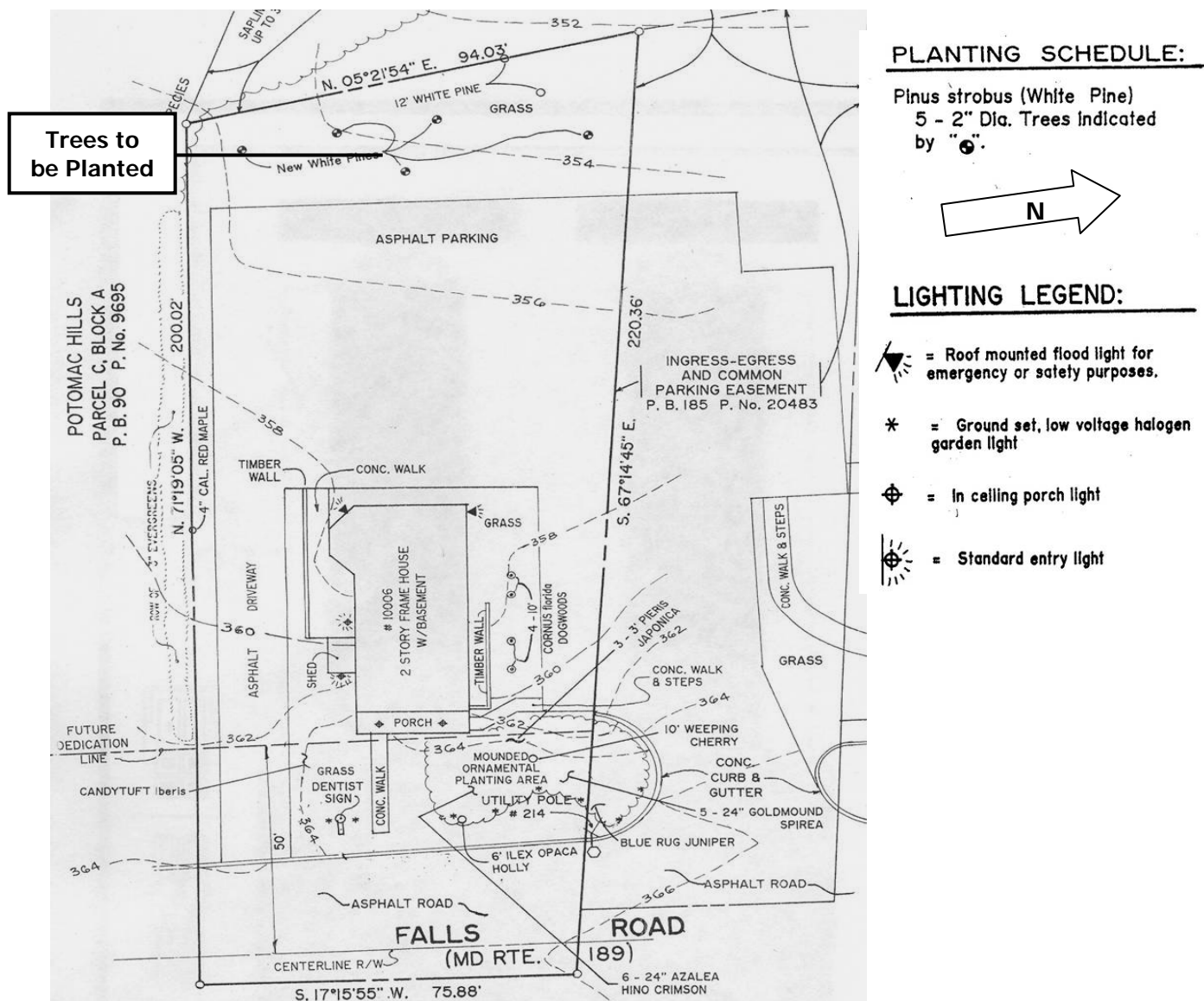
One condition recommended by the Technical Staff was installation of a 5-foot-wide concrete sidewalk along Falls Road, connecting to the existing northern driveway. A proposed 4-foot-wide concrete sidewalk is shown on the revised site plan, above. Petitioners testified that they needed to make the sidewalk 4 feet wide, instead of 5 feet wide as recommended, because there was insufficient space to put in a 5-foot-wide sidewalk without relocating an ornamental mound that is part of the landscaping. 11/13 Tr. 14. The Hearing Examiner finds that the reduced sidewalk width is acceptable.

The structure contains a dental office on the first floor and a residential unit on the second floor. Dr. Tamami and his family reside in the second floor residential unit, but they will be moving. Dr. Tamami intends to continue leasing the entire house, with his dental practice on the first floor, and to sublet the second floor and the basement portion of the house as a residential unit. The floor plan of the dental office is shown below (Exhibit 4(b)):



Parking and the Requested Waiver:

Technical Staff indicates that Petitioners are required to provide 4 parking spaces for the dental office and 2 for the residence, a total of 6 spaces. As can be seen on the revised site plan (Exhibit 22(a), above), Petitioners will have 5 parking spaces for the dental practice, including one handicapped accessible space, and 2 spaces for the residence. This is more than is required by Zoning Ordinance §59-E-3.7 (4 spaces per practitioner and 2 for residents). Technical Staff asked Petitioners to add five trees for screening to the rear, and they are shown on the revised Landscaping & Lighting Plan (Exhibit 26, below):



According to Technical Staff, the relocation of all parking spaces to the rear of the building satisfies all requirements of Zoning Ordinance §59-E-2.83 except for the 30% shading called for in §59-E-2.893(d). *See* Supplemental Staff Report of November 9, 2006 (Exhibit 25, p.3). Petitioners therefore seek a waiver of that requirement pursuant to Zoning Ordinance §59-E-4.5 (Exhibit 24). Appropriate notice of that waiver request was sent to all adjoining property owners and affected citizen associations for comment (Exhibits 20 and 21). None was received.

The Board of Appeals has authority under Zoning Ordinance §59-E-4.5 to waive any parking requirements that are not necessary to accomplish the objectives of the parking facility regulations. These objectives are set forth in Zoning Ordinance §59-E-4.2:⁷

A parking facility plan shall accomplish the following objectives:

(a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping planting, walls, fences or other natural features or improvements.

(b) The safety of pedestrians and motorists within a parking facility.

(c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.

(d) The provision of appropriate lighting, if the parking is to be used after dark.⁸

Technical Staff evaluated Petitioner's waiver request and determined that granting the requested parking waiver would be appropriate (Supplemental Staff Report of November 9, 2006 - Exhibit 25, pp. 3-4):

The proposed parking lot would be replacing the existing parking area, which is not in compliance with any elements (location, setback, screening and shading of paved areas) of the parking requirements. With the proposed relocation of the parking

⁷ Additional specifics are set forth in Section 59-E-4.3

⁸ Lighting is dealt with in a separate section, below.

spaces, all of the relocated spaces meet the location, setback, and screening requirements. However, the proposed parking area will not meet the requirement for the shading of the paved area, hence the subject request for a waiver from the requirement of Section 59-E-2.83 (d).

Although the new parking area would not meet the 30 percent shaded area requirement, the intent of this requirement is partially met since the parking spaces will not be visible from the street because they are located directly behind the two-story plus basement structure that is housing the proposed medical practitioner office. The location of the new parking area on the property is the most practical and appropriate relative to the proposed use. Moreover, the applicants have revised their landscape and lighting plan to add five white pine trees in the western (rear) portion of the property abutting the U.S post office parking lot, supplementing existing trees and ensuring screening and esthetics. Staff is of the opinion that the residential character of the property will be better maintained with the proposed relocation of the parking spaces and additional landscaping than it currently is. The revised landscape plan also addresses the recommended condition of approval in the technical staff report for S-2678 in terms of landscaping.

The proposed parking lot will provide safe and adequate parking accommodation with appropriate lighting to serve the proposed use. The requested waiver of the shading of paved areas requirement for the parking area and driveways is not likely to adversely impact the nearby residential uses or the area's transportation system. Indeed, the proposed relocation of the parking area, the provision of a van accessible handicap space with access to the front entrance of the structure, as well as the additional planting of trees and landscaping, provide for a condition more in compliance with the Zoning standards than the currently existing condition on the property. Moreover, the proposed relocation of the parking area will provide better-designed onsite circulation, and will preserve and enhance the residential character of the property. The proposed parking lot will provide safe and adequate parking accommodation to serve the proposed non-resident medical practitioner office as well as the residential use. Therefore, staff recommends approval of the requested waiver.

The Hearing Examiner accepts Technical Staff's evaluation and concludes that the requested parking waiver should be granted.

Hours of Operation, Staff and Patients:

The current hours of operation of Dr. Tamami's dental office are 8:00 a.m. to 5 p.m., Monday through Friday, and weekends and evenings as needed for emergencies. Petitioners seek to keep the same hours, which seem more than reasonable. Petitioners are agreeable to limiting patient visits to two scheduled patient appointments per hour, as recommended by Technical Staff and the Planning Board.

Petitioners also agreed to limit staff to no more than one full-time dentist on site at any one time, and no more than three full-time (or their part-time equivalent) dental assistants and/or office staff at the subject office at any given time, in accord with Technical Staff recommendations.

The Hearing Examiner finds that the proposed hours, staffing and patient activity will not adversely affect the neighborhood since they are moderate in scale and represent no increase over current hours, staffing and patient activity.

Lighting:

Lighting for the subject site is shown above on the revised Landscape and Lighting Plan (Exhibit 26). Currently, there are recessed lights on the porch of the residence, residential style entrance lights near doors, low voltage halogen landscape lights on the mounded ornamental planting area (in front of the house) and rarely-used floodlights to illuminate the rear parking area.⁹ Petitioners do not propose installation of any new lighting. Technical Staff is “of the opinion that the application in this case meets the lighting requirements of Section 59-G-1-23 (h).” *See* Supplemental Staff Report Re: Development standards and Lighting (Exhibit 15(a)).

According to Mrs. Tamami, the lighting on the subject property is minimal (just the ordinary light on a regular house, a porch light used in the evening and local landscape lighting that comes on after dark). Mr. Tamami said their lighting is “drowned out by the lighting that surrounds our property.” The neighboring properties include a commercial office building (right next door, at 10000 Falls Road), which has bright parking lot lights and lights on the exterior of the building illuminated 24 hours a day. Across the street from the site is the Potomac Public Library that has a sign in the front yard that is illuminated 24 hours a day, and behind the site is the Potomac Post Office which also has a parking area illuminated 24 hours a day. 11/13 Tr. 26-27.

⁹ Since the hours of operation are 8:00 a.m. to 5:00 p.m., turning on the floodlights would not ordinarily be necessary to the use.

Technical Staff confirmed this information and concluded: “Given the nature of the immediate neighborhood and the fact that there is no intent to intensify the existing lighting for the residential/home occupation use on the property, it is unlikely that there will be potential negative impact to the adjoining properties from illumination or glare.” Exhibit 15(a).

Based on this undisputed evidence, the Hearing Examiner finds the lighting to be appropriate and consistent with the Zoning Ordinance.

Dentist Sign:

Technical Staff recommended a condition that “[a]ll signs placed on the property shall meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area and Section 59-[F]4.1 (e) regarding illumination, “ and that “the location and dimension of the sign shall be included in the site plan.” The revised site plan (Exhibit 22(a)) does show the location of the existing dental sign. Mrs. Tamami testified that Petitioners planned to keep the existing sign (depicted below), and that a sign permit has been requested, but it is being held by DPS until the Special Exception is acted upon.

11/13/06 Tr. 22.



The Hearing Examiner has recommended a condition regarding signs in Part V of this report, which is similar to that suggested by Technical Staff, but adds a requirement that a permit be obtained for the sign, and a copy of it filed with the Board of Appeals.

E. Public Facilities

Transportation planning staff found that there would not be any adverse impact on local roadways as a result of the subject use, but suggested two conditions – the concrete sidewalk which was discussed in the previous section and closure of the southern driveway. Petitioners balked at closing the southern driveway, which has been there for many years, for safety reasons. There are trees, which are not on Mr. Srour's property, that block the view of cars exiting from the northern driveway, thereby leaving the southern driveway as the only safe exit. Technical Staff had incorrectly stated in its report that the parcel with the trees in question was owned by the same individual who owns the subject site. Technical Staff orally withdrew that finding before the Planning Board, and it was crossed-through in the Planning Board's letter (*See Exhibit 16*).

Instead of closing the southern driveway, Petitioners agreed to a condition requiring them to contact the State Highway Administration to seek a review of the safety issues. The following condition is recommended in Part V of this report:

Within 30 days after the effective date of this Resolution, the Petitioners shall contact the State Highway Administration (SHA) to seek a review of the safety issues surrounding the possible closure of the southern driveway, and shall follow SHA's determination. Petitioners must report the results of their contact with SHA, in writing, to the Board, and must seek administrative modification of the site plan if SHA requires changes in the southern driveway after evaluating the safety concerns.

Transportation Planning Staff determined that the proposed use of the existing building as a dental office would generate a maximum of eight peak-hour trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Because the total number of peak hour trips generated by the use will be less than 30, no traffic study is required to satisfy the Local Area Transportation Review (LATR) test. Technical Staff also found that "[t]he proposed use will be adequately served by existing public facilities . . . [and] is not likely to reduce the safety of

vehicular or pedestrian traffic.” Exhibit 15, p. 16. The Hearing Examiner agrees with these conclusions, and so finds.

F. The Environment

The subject site is not in a Special Protection Area, and no environmental issues were raised by Technical Staff. The following comments were made by the Environmental Planning Section (Exhibit 15, p. 6):

- This application is for reuse of an existing building and will create no site changes.
- This application is exempt from forest conservation requirements. An exemption (4-04222E) was granted on 2/27/04 and re-certified on 7/19/06.

As requested by Technical Staff, a copy of the 7/19/06 forest conservation exemption was included in the record as Exhibit 18. The Hearing Examiner finds no environmental problems in this case.

G. Community Response

There has been no community opposition to the subject Petition. This fact is not surprising since granting the petition will put no burden on the community that was not already present, and the transitional location of the site makes it ideal for this type of professional office use.

III. SUMMARY OF THE HEARING

Petitioners' Case:

The only witnesses to testify at the hearing were the Petitioners and their landlord, Farid Srour, who supported the petition. Petitioners' testimony consisted mostly of a statement from Mrs. Tamami (11/13/06 Tr. 8-11), which is paraphrased below:

Dr. Tamami uses the ground floor (or first floor) of the 3-story house as a dental office pursuant to a home occupation permit. They use the top floor and basement as their residence.

Due to their expanding family, they would like to reside elsewhere but continue to operate the dental office on the first floor. They do not propose any changes to the practice's operation, so that operating it as special exception would be no different than operating it as a home occupation.

The dental practice is a low-volume operation in compliance with the home occupation rules. The office is approximately 1,100 square feet with 3 operatories. It is open Monday through Fridays from 8:00 am to 5:00 pm, with occasional weekend and weeknight hours to accommodate patient emergencies. Dr. Tamami is the only dentist. On a given day, the other employees are one full-time receptionist, and at most 2 part-time dental assistants. Dr. Tamami does not see more than 8 patients in one day, and no more than 2 patients at the same time.

As Petitioners propose no changes in the current use of the property, nothing about its residential appearance would change. At present, the only features of the property that suggest a business use are (1) an unobtrusive sign in the front yard, and (2) a pre-existing parking lot with four delineated spaces to the north of the house.

Petitioners have proposed moving the parking to the rear of the property. Under the new proposal, four spaces would directly face the parking lot for the Potomac post office, and two spaces, including a van-accessible handicapped space, would be perpendicular to the rear of the house. As such, the proposed parking will meet the requirements of Section 59-E-2.83, other than subsection (d), regarding the shading of paved areas. Although Petitioners will plant five additional white pine trees along the west side of the property, because approximately 70% of the subject property is covered by impervious surface, and there is not sufficient green space to plant trees to meet the shading requirement. Accordingly, Petitioners are requesting a waiver of Section 59-E-2.83(d).

By relocating the parking to the rear of the property, the residential appearance of the property, and the overall neighborhood, would be improved. The parking would be shielded from the view, as it would essentially be located behind the house and at the bottom of a hill. It would also be concentrated with neighboring parking facilities, specifically, parking for the post office directly behind the property, parking for 10000 Falls Road (Bank of America) to the south, and parking for 10008 Falls Road to the north.

Mrs. Tamami noted that there has been no objection from the neighbors, which are almost exclusively commercial buildings and government uses. There is only one actual residence neighboring the subject property, and that residence is owned by Mr. Srour and used for business purposes pursuant to a home occupation permit. Petitioners believe that the concerns of George Barnes of the West Montgomery Citizens Association, concerning screening for the parking, have been alleviated by moving all the parking spaces to the rear of the building.

Mrs. Tamami indicated that the petition meets all the requirements of Section 59-G-2.36(a) for a medical practitioner's office for use by a non-resident, and that the proposed use will not adversely affect the use and development of the surrounding area because the property has been used

as a dental office pursuant to a home occupation since the 1990's by various dentists. No expansion of the current use is proposed. She asserted that the Potomac Master Plan specifically contemplates special exceptions for this property and that a low volume professional practice serving local residents is an ideal use in what is a transition zone between the Potomac Village Shopping Center and the residences further north on Falls Road. 11/13 Tr. 12-13.

Petitioners introduced a revised landscaping plan (Exhibit 26), showing five pine trees that will be planted behind the house. Petitioners also agreed to the conditions imposed by the Planning Board and the Technical Staff, except for the second recommended condition, which was superseded by revised site and landscaping plans and by other considerations.¹⁰ 11/13 Tr. 13-14; 21. These other considerations involve the recommended 5-foot-wide sidewalk and the recommended closing of the southern driveway. Petitioners testified that they needed to make the sidewalk 4 feet wide, instead of 5 feet wide as recommended, because there was insufficient space to put in a 5-foot-wide sidewalk without relocating an ornamental mound that is part of the landscaping. 11/13 Tr. 14.

Petitioners also balked at closing the southern driveway, which has been there for 20 years, for safety reasons. There are trees, which are not on Mr. Srour's property, that block the view of cars exiting from the northern driveway. Instead of closing the southern driveway, Petitioners agreed to a condition requiring them to contact the State Highway Administration to seek a review of the safety issues. Petitioners accepted the findings of the Technical Staff in its report as their own testimony, except as to ownership of the property where the view-blocking trees in question are located. Technical Staff orally withdrew that finding before the Planning Board. (*See* Exhibit 16). 11/13 Tr. 15-22. A sign permit has been requested, and it is being held by DPS until the Special Exception is acted upon.

¹⁰ The third recommended condition was mooted by Petitioners' submission of a current Forest Conservation exemption letter (Exhibit 18).

As to the specific conditions required under Zoning Ordinance §59-G-2.36(a), Mrs. Tamami testified that the exterior of the premises is not being changed; that 67 percent of the building is devoted to residential uses; that after checking in the nearest commercial zone (Potomac Village Shopping Center) they determined that office space suitable for the practice of a professional was unavailable in either the nearest commercial zone or the nearest medical clinic office building; that their proposal is to have Dr. Tamami as the sole dentist; that they are willing to have a limit up to three full time or part-time dental assistants; that the office will not constitute a nuisance because of noise, traffic, or physical activity; and that the use will not adversely affect the use and development of neighboring properties and the general neighborhood. 11/13 Tr. 23-26.

According to Mrs. Tamami, the lighting on the subject property is minimal (just the ordinary light on a regular house, a porch light used in the evening and local landscape lighting that comes on after dark). Mr. Tamami said their lighting is “drowned out by the lighting that surrounds our property.” The neighboring properties include a commercial office building (right next door, at 10000 Falls Road), which has bright parking lot lights and lights on the exterior of the building illuminated 24 hours a day. Across the street from the site is the Potomac Public Library that has a sign in the front yard that is illuminated 24 hours a day, and behind the site is the Potomac Post Office which also has a parking area illuminated 24 hours a day. 11/13 Tr. 26-27.

Hours of operation are eight to five Monday through Friday, with weekends and evenings for emergencies.

Mrs. Tamami identified the photos in Exhibits 8(a) through (e), and the photos in the Technical Staff report. She indicated that Petitioners wish to keep the sign depicted on the bottom of page 11 of the Technical Staff report.

Dr. Tamami indicated that he is satisfied with the restriction of a maximum of two patients at the same time and no more than eight patients in one day. 11/13 Tr. 32.

Farid Srour:

Farid Srour testified that he owns the subject property leased to Petitioners, and that he supports the petition. The property with the bushes which block the northern driveway's view is not owned by him. He also indicated that the subject house has been there for 50 years, and there have always been two driveways accessing Falls Road. 11/13 Tr. 36.

People's Counsel:

The People's Counsel, Martin Klauber, made a brief statement in support of the petition and waiver request (11/13 Tr. 36-37):

I recommend that the Hearing Examiner recommend approval of this requested special exception with the conditions that petitioner has agreed to. This has been a longstanding practice held by other dentists on Falls Road in this location. It basically serves the purpose of all special exceptions to provide health care services to the residents of the community in the community that they're residents of.

It is a permitted special exception use provided that the general and specific conditions contained in the zoning ordinance are met. They have been more than met; the details of everything, with the sidewalks, have been gone into and I think the record is complete. The record is full and it supports what the petitioners are requesting at the subject property.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Based on the testimony and evidence of record, the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a medical practitioner’s office for use of other than a resident of the building. Characteristics of the proposed medical practitioner’s office use that are consistent with the “necessarily associated” characteristics of medical practitioner’s office uses will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with medical practitioner’s office uses, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed, in the context of the subject property and the general neighborhood,

to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff indicates that the physical and operational characteristics necessarily associated with a medical practitioner's office for use by a non-resident include "the proposed building, the parking facility, lighting, vehicular trips to and from the site by the clientele, and residents of the building." Exhibit 15, p. 8. Technical Staff also states that the non-inherent effects concerning the proposed use include "the hours of operation, number of parking spaces, traffic on and around the site and the location and size of the driveway."

The Hearing Examiner does not agree that these are non-inherent effects in this case. There is nothing about the hours of operation, number of parking spaces, traffic on and around the site and the location and size of the driveway that is inconsistent with the "necessarily associated" characteristics of medical practitioners' office uses. The Hearing Examiner finds that the physical and operational characteristics of the proposed dental office are no different from what typically may be encountered with any dental office in a residence. Therefore, based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes that there are no non-inherent adverse effects arising from the subject use, and certainly none requiring denial of the petition.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the other exhibits and the testimony of the Petitioners provide ample evidence that the general standards would be satisfied in this case.

Section 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A “medical practitioners’ office for use of other than a resident of the building” is a permissible special exception in the R-200 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.36 for a medical practitioner’s office by a nonresident as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board’s technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property lies within the 2002 Potomac Subregion Master Plan area. The Master Plan (p. 67) specifically addresses the subject site and two other nearby parcels (10008 and 10010 Falls Road), identified together as the “Habibi/Srour Properties.” The Plan notes that these properties form “a transition from the commercial core to the single-family residential area ordering the [Potomac] village,” and suggests that the site is suitable for housing for the elderly. The Plan rejected commercial zoning (C-1) for the property, and recommended the retention of the existing R-200 zoning. Since the R-200 Zone permits the requested use by special exception, it is fair to say that the use is not inconsistent with the applicable Master Plan.

Technical Staff found the current proposal to be “a fairly modest extension of the existing use of the property,” with adequate parking and access.

In sum, the evidence supports a finding that the proposed modifications would be consistent with the recommendations of the 2002 *Potomac Subregion Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The special exception use will be in harmony with the general character of the neighborhood. The requested special exception will not increase the intensity of activity or traffic, will not adversely affect parking conditions in the neighborhood, and will not increase the number of similar uses, since the use currently exists as a licensed home occupation. Exhibit 32.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The Hearing Examiner concludes that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site for the same reasons as stated in response to the previous section. Moreover, as noted by Technical Staff, “[t]he proposed use can be an ideal transition between the residential area and the adjoining commercial area given its location on the periphery of the residentially zoned area to the north, northeast and east, and adjacent to the commercial development to the south.”

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject*

site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: Based on the nature of the proposed use (*i.e.*, a dental office), the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Technical Staff also notes that Petitioners provided them with the following information:

Regarding biohazard and other wastes, needles are discarded into plastic biohazard bins that are affixed to the wall in each operatory. When the bin gets full, we call a disposal company to retrieve it. There is no other hazardous waste (for example, no chemicals for developing film because we use digital x-rays). Regular trash is picked up twice a week by a private trash company. We do not store anything outdoors (other than the regular trash & recycling bins).

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The use as a dental office has existed at this site for a number of years. Since the actual use will not change, converting it into a special exception does not increase the number, intensity or scope of special exception uses in a way that could adversely affect the area. Technical Staff reports the following special exception uses in the area:

<u>Case No.</u>	<u>Address</u>	<u>Uses Approved</u>	<u>Date</u>
BAS-1523	10020 Falls Rd	Computer consulting and programming	June 7, 1988
BAS-1690	10010 Falls Rd	Real Estate Office	August 3, 1989
BAS-1386	10005 Falls Rd	Elderly Housing	September 16, 1987

Staff was not able to determine which of the three special exceptions are still active. According to Staff, it appears that the majority of the six or seven residentially zoned properties located north of the site (on the west side of Falls Road) are housing home occupations or approved special exception uses. This is not surprising given the transitional nature of the area. In any event, the Hearing Examiner finds that granting the instant petition will not adversely affect the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The special exception will provide a service to the surrounding neighborhood, and improve the health and safety through the provision of dental services.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff found that “[t]he proposed use will be adequately served by existing public facilities.” Exhibit 15, p. 16. Based on this evidence, the Hearing Examiner so finds.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is*

considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the public facilities review must include analysis of the Local Area Transportation Review (“LATR”).¹¹ The Technical Staff did do such a review, and it concluded that the proposed dental practitioner’s office use would generate fewer than 30 total trips in the weekday morning and evening peak hours. Therefore, the requirements of the LATR are satisfied without a traffic study. See the July 2004 LATR Guidelines, of which the Hearing Examiner takes official notice.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff also found that the use as proposed “is not likely to reduce the safety of vehicular or pedestrian traffic.” Exhibit 15, p. 16. Based on this evidence, the Hearing Examiner so finds.

C. Specific Standards

The testimony and the exhibits of record, including the Technical Staff Report and Supplemental Reports, provide sufficient evidence that the specific standards required by Section 59-G-2.36 are satisfied in this case, as described below.

¹¹ The Policy Area Transportation Review (PATR) was abolished prior to the filing date of this modification petition.

Sec. 59-G-2.36. Medical practitioners' office for use of other than a resident of the building.

(a) In all residential zones other than specified in Subsection (b) below, one or more offices of not more than 2 full-time medical practitioners may be permitted, provided that:

(1) The exterior of the premises is not changed or altered in appearance;

Conclusion: No changes to the exterior of the building are planned. Some landscaping will be added at the recommendation of Technical Staff.

(2) Not less than 50 percent of the floor space of the building is devoted to residential uses;

Conclusion: Mrs. Tamami testified that 67 percent of the building is devoted to residential uses. 11/13 Tr. 23-26. A condition is recommended in Part V of this report that would require the percentage of residential use to remain at or above 50%.

(3) Office space suitable for the practice of the profession is unavailable in either the nearest commercial zone or the nearest medical clinic office building constructed according to a special exception grant;

Conclusion: Mrs. Tamami testified that she checked in the nearest commercial zone (Potomac Village Shopping Center) and determined that office space suitable for the practice of a profession was unavailable there. Petitioners were not aware of any medical clinic office building in their general area, so Mrs. Tamami checked with Planning Board Staff, and they also were not aware of any such building in the area. 11/13 Tr. 23-26. In the absence of evidence to the contrary, the Hearing Examiner finds that suitable office space is not available in either nearest commercial zone or in any nearby medical clinic office building.

(4) Additional medical specialists are not employed more than an aggregate of 40 hours per week and there are never more than 2 medical professionals, whether general practitioners or medical specialists, in such office on any one day. In consideration of an application for part-time medical specialist, the Board must consider the total number of employees and the total number of patients at any one time;

Conclusion: Although this subsection would permit two medical professionals to practice at the subject site, Petitioners have not sought to have a second dentist on site. Mrs. Tamami testified that their proposal is to have Dr. Tamami as the sole dentist, and this provision is therefore satisfied.

- (5) *The maximum number of nonprofessional support staff must be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic;*

Conclusion: Mrs. Tamami testified that Petitioners are willing to have a limit of up to three full time or part-time dental assistants or staff on site. 11/13 Tr. 23-26. This staffing level represents no increase in Dr. Tamami's practice, and is consistent with the recommendations of the Technical Staff and the Planning Board. The Hearing Examiner has recommended this condition in Part V of this report.

- (6) *Such use will not constitute a nuisance because of noise, traffic or physical activity; and*

Conclusion: Dr. Tamami has been operating his dental office on site as a licensed home occupation. The Hearing Examiner finds that the current use does not constitute a nuisance, and the proposed conversion to a special exception will not alter the use in such a way as to create a nuisance because of noise, traffic or physical activity.

- (7) *Such use will not tend to affect adversely the use and development of neighboring properties and the general neighborhood.*

Conclusion: There is no evidence that the current use has had any adverse effect on the use and development of the neighboring properties and the general neighborhood. The Hearing Examiner finds that the proposed use will not have any such adverse effect, but rather will allow Dr. Tamami to continue to serve his patients on site.

- (b) *In the R-H, R-10, R-20 and R-30 zones, one or more offices for one or more medical practitioners may be permitted provided, that: * * **

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: Petitioners meet the applicable development standards, as shown below in the following chart from the supplemental Technical Staff report (Exhibit 15(a)):¹²

Current Development Standard	Required	Proposed
Minimum Lot Area	20,000 SF	17, 472 SF (non-conforming lot) ¹³
Minimum Lot width: <ul style="list-style-type: none"> • @ Front building line • @ Street line 	100 ft 25 ft	80 ft (non-conforming) ¹⁴ 75 ft
Minimum Building Setback: Front Yards Side Yards <ul style="list-style-type: none"> ▪ One side ▪ Sum of both sides ▪ Rear 	40 ft 12 ft 25 ft 30 ft	57.5 ft 25 ft minimum 52.8 ft 95 ft
Maximum Building Height	50 ft	28± ft Residence
Maximum Building Coverage Including accessory building	25%	7.2%
Parking: <ul style="list-style-type: none"> • Residential • Dental office - Total 	2 4 6	2 5 (including handicap space) 7

¹² The Hearing Examiner has corrected some errors in the chart.

¹³ Questions relating to the minimum lot area and frontage were discussed extensively in Part II. A. of this report, where the Hearing Examiner concluded that the present non-conformity should not preclude granting the special exception.

¹⁴ See Note 13, above.

An issue with regard to the front yard setback should be mentioned. The 2002 Potomac Subregion Master Plan recommends widening Falls Road, adjacent to the site, to a 100-foot right-of-way (r-o-w). If and when that occurs, it will result in a r-o-w line located only 2 feet from the front porch of the existing house on the subject site. However, according to Technical Staff, the proper measure of the current front yard setback is 57.5 feet, which is measured to the current street line and not the proposed r-o-w, because the proposed r-o-w becomes a factor in evaluating the standards only if there is a need for subdivision. Currently, there is no such need regarding the subject property, and therefore the front yard setback is measured from the existing street line. *See* Technical Staff Supplemental Report, Exhibit 15(a).

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As mentioned in Part II.D of this report, Petitioners' revised site plan (Exhibit 22(a)) more than meets the requirements of Zoning Ordinance §59-E-3.7, which calls for 4 spaces per practitioner and 2 for residents. According to Technical Staff, Petitioners have also met the parking facility requirements of §59-E-2.83, except for §59-E-2.83(d) pertaining to shading, from which Petitioners seek a waiver. For the reasons stated in Part II.D of this report, the Hearing Examiner recommends granting the requested parking waiver.

*(c) Minimum frontage * * **

Conclusion: Not applicable.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: Not applicable. The property is exempt from the forest conservation requirements of Chapter 22A, as indicated in Exhibit 18 from the M-NCPPC Environmental Planning Division. The property is not within a special protection area, and Technical Staff's report indicates that there are no environmental issues. Exhibit 15.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Not applicable.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: As indicated earlier in Part II.D of this report, Petitioners do not plan to change the existing sign on the property; however, they will be required, by condition, to obtain a permit in accordance with Zoning Ordinance §59-F, and to file a copy of the permit with the Board.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: As mentioned above, the building will be unchanged. Technical Staff concluded that the residential character of the subject site has been maintained, and it is compatible with the neighborhood. The Hearing Examiner agrees.

(h) Lighting in residential zones. All outdoor lighting must be located,

shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: As discussed in Part II.D of this report, the outside lighting is residential in character, and Petitioners do not propose installation of any new lighting. According to Petitioners, the lighting on the subject house will not produce sufficient glare to disturb the neighbors and indeed will be far exceeded by the lighting on surrounding properties. 11/13/06 Tr. 26-27. As pointed out by Technical Staff, the rear of the property abuts a parking lot of a post office, and the south side yard of the property abuts a commercial use (Bank) with mounted lights on the side of the building closest to the subject property. Directly across the street from the subject property is a public library that has its identification sign lit all night. Given the nature of the immediate neighborhood and the fact that there is no plan to intensify the existing lighting for the residential/home occupation use on the property, Technical Staff “is of the opinion that the application in this case meets the lighting requirements of Section 59-G-1-23 (h).” Exhibit 15(a). The Hearing Examiner agrees with Technical Staff’s conclusion that the proposed lighting will not produce objectionable illumination or glare, and based on this undisputed evidence, the Hearing Examiner so finds.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing

Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: This provision is technically inapplicable since the building will not be “constructed, reconstructed or altered.” Nevertheless, as already mentioned, the structure continues to have a residential appearance, with suitable landscaping, streetscaping, pedestrian circulation and screening.

Based on the testimony and evidence of record, I conclude that the non-resident medical practitioner’s office use proposed by Petitioners, as conditioned below, meets the specific and general requirements for the special exception, and that the petition and requested parking waiver should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2678 seeking a special exception for a non-resident medical practitioner’s office use located at 10006 Falls Road, Potomac, Maryland, and the requested Parking Waiver, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, the testimony of their witness and their representations and exhibits of record;
2. The Petitioner’s office space is limited to the space it now occupies, and not less than 50% of the floor space shall be maintained for residential use;
3. The Petitioner’s hours of operation are limited to 8:00 a.m. to 5 p.m., Monday through Friday, and weekends and evenings as needed for emergencies;
4. There will be no more than one full-time dentist on site at any one time, and Petitioners may employ no more than three full-time (or their part-time equivalent) dental assistants and/or office staff at the subject office at any given time;

5. Petitioners may have up to two scheduled patient appointments per hour;
6. Within 30 days after the effective date of this Resolution, the Petitioners shall contact the State Highway Administration (SHA) to seek a review of the safety issues surrounding the possible closure of the southern driveway, and shall follow SHA's determination. Petitioners must report the results of their contact with SHA, in writing, to the Board, and must seek administrative modification of the site plan if SHA requires changes in the southern driveway after evaluating the safety concerns.
7. Petitioner should install the new landscaping shown on the Landscape and Lighting Plan (Exhibit 26) in the next growing season and should install the new sidewalk shown on the revised Site Plan (Exhibit 22(a)) as soon as weather permits;
8. The parking area should be moved to the rear of the building, as shown on the revised Site Plan (Exhibit 22(a)). That plan shows five spaces for the dental office, including one handicapped accessible space, and two for the residents;
9. Pursuant to Zoning Ordinance §59-E-4.5, a waiver is granted from the shading requirements contained in Zoning Ordinance §59-E-2.83(d) because those requirements are not necessary to accomplish the objectives of Zoning Ordinance §59-E-4.2;
10. All signs placed on the property shall meet the requirements of Section 59-F-4.2(a) in terms of number, location and area and Section 59-F-4.1(e) regarding illumination. Furthermore, a permit must be obtained for the sign, and a copy of it filed with the Board of Appeals; and
11. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special

exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: December 1 , 2006

Respectfully submitted,

Martin L. Grossman
Hearing Examiner